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NARRATIVES OF IDENTITY, NATION, AND OUTSIDERS WITHIN OUTSIDERS: NOT YET A POST-ANYTHING WORLD

Berta Esperanza Hernández-Truyol*

I. INTRODUCTION

The essays in this cluster all deploy narratives of identity and nation. They also bring to life the status of outsiders as racialized "others." This reality of racialization contradicts the popular narrative that we live in a post-racial society. The current claim of post-racialism is grounded in the simple fact that in the United States a huge margin of the popular vote elected a Black man as president. That man is Barack Hussein Obama, someone who has to engage, as those who are the subject of the essays, with concerns about nation, identity, and being a racialized "other."

At the 2004 Democratic National Convention, then Senator Obama gave a rousing and star-making speech in which he stated that "[t]here's not a liberal America and a conservative America; there is the United States of America. There's not a [B]lack America and a [W]hite America and Latino America and Asian America; there is the United States of America."¹ These statements reflect the current iteration of the concepts that are understood as post-racialism, a political philosophy whose proponents claim that race no longer matters and is unimportant in regard to daily interactions and life chances.²

The present conceptualization of a post-racial America became mainstream for many when Barack Obama took office as the 44th President of the United States in 2008. Suddenly, all of the major news outlets began debating whether his victory brought an official end to the acknowledged pernicious and longstanding racial and ethnic stigmas that have pervaded

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¹ Scott J. Anderson, *Barack Obama: A Meteoric Rise*, CNN (Aug. 18, 2008), http://articles.cnn.com/2008-08-18/politics/revealed.obama.profile_1_america-and-latino-america-illinois-state-senate-obama-first?_s=PM:POLITICS.

² See Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1595, available at http://www.uiowa.edu/~ilr/issues/ILR_94-5_Cho.pdf. Significantly, Frank Valdes, in a talk at the Third National People of Color Legal Scholarship Conference at Seton Hall on September 9, 2010, noted that there were two other meanings to "post-racial." One is the meaning that was utilized by the Rev. Martin Luther King, Jr.: a time when persons would be judged by the content of their character not the color of their skin. The other is Derrick Bell's meaning in the story of the Space Traders, a time when all persons of color are gone. See Sumi Cho & Francisco Valdes, *CRT @ 20: Retrospect & Prospect – Legal Colorblindness and Racialized Post-Racialism Within (& After?) the Nation-State*, 43 CONN. L. REV. (forthcoming 2011).

this country. For example, Daniel Schorr of NPR suggested that the color-line may be blurring, that Obama “transcends race,” and that Americans have begun to make “race-free judgments.”³ In regard to President Obama’s 2009 State of the Union address, Chris Matthews, host of the MSNBC program “Hardball,” stated that “[Obama] is post-racial, by all appearances.”⁴ However, ironically and hypocritically, Matthews confirmed the ongoing significance of race, by continuing: “I forgot he was [B]lack tonight for an hour. You know, he’s gone a long way to become a leader of this country, and past so much history, in just a year or two. I mean, it’s something we don’t even think about.”⁵ If it took him, a veteran Washington insider and political correspondent, this long to see past race, what hope is there that the rest of this country has truly become post-racial?

Race has been one of the United States’ most consistently egregious issues since its founding. African slaves were brought here against their will, and even after slavery was officially abolished in 1865 by the Thirteenth Amendment,⁶ African Americans were still battered by longstanding discrimination, new methods of torture, and the installation of fear. Jim Crow laws and court decisions kept the races separate,⁷ and African Americans were denied the full right to vote in many states long after the 1965 Voting Rights Act was passed. These laws also prohibited African Americans from attending college,⁸ while also excluding their equal access to credit and federally backed mortgages to purchase homes.⁹ These policies ended—*de jure* but not *de facto*—with the Civil Rights Acts of the late 1950’s and 1960’s.¹⁰ To be sure, some of today’s children might not experi-

³ Daniel Schorr, *A New, ‘Post-Racial’ Political Era in America*, NPR (Jan. 28, 2008), <http://www.npr.org/templates/story/story.php?storyId=18489466>.

⁴ *Chris Matthews’ Comments Raise Questions About “Post-Racial” U.S.*, NEWSONE (Jan. 29, 2010), <http://newsone.com/nation/associated-press/chris-matthews-comments-raise-questions-about-post-racial-u-s/>.

⁵ *Id.*

⁶ U.S. CONST. amend. XIII.

⁷ David Pilgrim, *What Was Jim Crow?*, JIM CROW MUSEUM RACIST MEMORABILIA FERRIS ST. U. (Sept. 2000), <http://www.ferris.edu/jimcrow/what.htm>.

⁸ *See id.*

⁹ *See* Thomas J. Sugrue, *The Myth of Post-Racial America*, WASH. POST, June 10, 2010, http://voices.washingtonpost.com/political-bookworm/2010/06/the_myth_of_post-racial_america.html.

¹⁰ The Civil Rights Act of 1957 was the first time since Reconstruction that the federal government took the initiative to pass legislation to protect civil rights. This is the Act that established the Civil Rights Division at the Department of Justice and allowed prosecutions of persons who interfered with the right to vote. The Act also established the Commission on Civil Rights, which could investigate allegations of deprivations of the right to vote. 42 U.S.C.A. § 1971 (West 2011). The Civil Rights Act of 1964 followed, prohibiting discrimination in voter registration (Title I), public accommodations (Title II), and employment (Title VII). It also promoted desegregation of public schools and permitted the withdrawal of federal funds from programs that were discriminatory. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964). The Voting Rights Act of 1965 prohibits voting practices that are discriminatory. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965). The Fair Housing Act forbids discrimination in sale or rental of public or private housing. Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (1968). However, in practice, these laws were not

ence the same exclusions as their parents, but the fear and experiences of racialized actions are still a reality.¹¹

It is also significant that today the racialized "other" can come in many forms—the "us" is a diverse amalgam of many races, ethnicities, religions, nationalities, classes, colors, sexes, accents, and sexual identities. In all cases, it is folly to even fantasize that a land with a 200 year history of de jure discriminatory practices can overnight become post-racial simply because one Black man was elected President. The President did indeed manage to overcome both racial prejudice and economic adversity; he likely also—as is reflected by his detractors' emphasis on his middle name "Hussein"—overcame nativism. However, President Obama's success notwithstanding, there are thirty-five million African Americans and other persons of color in the United States whose lives are still tethered to the structural racism ingrained into the fabric of all aspects of society.

II. THE ESSAYS

The essays that comprise this cluster plainly show that in the United States, issues are discussed in terms of race—sometimes overtly or sometimes covertly, as if in code. The ubiquity of race can be neither denied nor ignored. Immigration matters are commonly discussed in terms of race and ethnicity, with these words often used interchangeably. All the factors constitute the cluster "Narratives of Identity, Nation, and Outsiders Within Outsiders."

A. Mary Romero's "Are Your Papers in Order?: Racial Profiling, Vigilantes, and 'America's Toughest Sheriff'"

Mary Romero's essay, *Are Your Papers in Order?: Racial Profiling, Vigilantes and "America's Toughest Sheriff,"*¹² presents an extraordinarily poignant example of the reality that this is not a post-racial world. The work captures the tensions suggested by the cluster title. It brings to the fore issues of identity and nation by interrogating who belongs within the U.S. borderlands. In asking this question, it also addresses the issue of outsiders

always followed. For example, early in the week of the celebration of the Third National People of Color Legal Scholarship Conference in September of 2010, there was a lively and broad discussion that included narratives about minorities' experiences and the persistent reality of racism. One colleague recalled her family's use of the "Blue Book"—a book that listed friendly and unfriendly places—as a tool to bypass establishments that were unwelcoming of people of color at a time after the passage of the prohibition of discrimination in public accommodations.

¹¹ See generally KATHERYN RUSSELL-BROWN, *THE COLOR OF CRIME* (2d ed. 2008); see also Melissa Trujillo, *Henry Louis Gates Jr. Arrested, Police Accused of Racial Profiling*, HUFFINGTON POST (July 20, 2009), http://www.huffingtonpost.com/2009/07/20/henry-louis-gates-jr-arre_n_241407.html.

¹² Mary Romero, *Are Your Papers in Order?: Racial Profiling, Vigilantes and "America's Toughest Sheriff,"* 14 HARV. LATINO L. REV. (forthcoming 2011).

within outsiders, especially in noting that within these *fronteras estado unidenses*¹³ Latinas/os, regardless of status, are considered “others” by those who claim hegemony, although Latinas/os currently account for approximately one in six *estado unidenses*,¹⁴ or 16.3 percent of the total population.¹⁵ The article highlights the problems that surround the current climate in immigration, including the pervasive nativist and anti-immigrant sentiment. These attitudes, in turn, have resulted in draconian measures aimed at undocumented non-citizens who are residing within the boundaries of the U.S. borders. However, because of the racialized nature of U.S. policies and laws, the impact spills over, affecting not only the undocumented but also legal residents and citizens. Romero poignantly describes the “political spectacle and symbolic politics that normalize[s] human and civil rights violations and legitimize[s] racism toward immigrants.”¹⁶

The article is organized along three main parts. First, it discusses the symbolic politics and spectacles in the construction of an immigration threat. In this part Romero describes how the conversations about immigration have been melded with the current security hysteria to create a sense of crisis.¹⁷ She notes that the terms used, such as “captured” and “rounded up,” bring to mind military conflict—as do the names of programs such as Operation Return to Sender and National Fugitive Operations Program, for example. These combined tropes, together with the “chronic use of anti-immigration terms by the mainstream media and elected officials” effect a spectacle. Such spectacle then feeds into the symbolic politics of the “majority” who create a narrative of white injury which claims that non-Latina/o white middle class citizens are victims of an untoward and colored invasion.¹⁸ Interestingly, in the 2010 census fifty-three percent of Latinas/os identified themselves as white.¹⁹ Ironically, the injuries the “majority” claim, are in geographies in which persons of color have failed to achieve success: education, health care, employment, equality, and freedom to speak the language of their choosing.

The second part of Dr. Romero’s essay presents an overview of the reorganization of immigration policy and law enforcement after the creation

¹³ “U.S. borders” in Spanish.

¹⁴ “Persons from the United States” in Spanish.

¹⁵ Jeffrey S. Passel et al., *Census 2010: 50 Million Latinos: Hispanics Account for More Than Half of Nation’s Growth in Past Decade*, PEW HISP. CTR. 1 (March 24, 2011), <http://pewhispanic.org/files/reports/140.pdf>. Indeed, four states, Hawaii (77%), California (60%), New Mexico (60%), and Texas (55%), and the District of Columbia (65%, down from 72% in 2000) have populations that are more than fifty percent minority. Laura Parker, *Race in America: 5 Take-Aways From the 2010 Census*, AOL News (Mar. 25, 2011), http://www.aolnews.com/2011/03/25/race-in-america-5-take-aways-from-the-2010-census/?a_dgi=aolshare_email.

¹⁶ Romero, *supra* note 12.

¹⁷ *Id.*; see generally Berta Esperanza Hernandez-Truyol, *Glocalizing Terror*, 81 OR. L. REV. 941 (2002) (discussing the fear from the 9/11 attacks and resultant targeting of immigrants based on their national, racial, religious, ethnic, and political identities).

¹⁸ See Romero, *supra* note 12.

¹⁹ Passel et al., *supra* note 15.

of the Department of Homeland Security (DHS). She notes that “[p]lacing immigration under [DHS] provided the basis for nativist groups to argue that all immigrants are criminal and should be addressed with the same aggressive law enforcement aimed at terrorists, drug dealers, and human smugglers.”²⁰ Thus, the move limned violent and dangerous criminality with criminalization of status—transmogrifying those whose sole offense is illegal presence into perfidious predators.

The last section of the article turns to immigration enforcement as performance—Foucaultian spectacle. The first example is of Sheriff Joe Arpaio’s brand of law enforcement, which includes claiming that immigrants are health risks and setting up “a tent prison in the Arizona desert, banning coffee and cooked meals, and reestablishing chain gangs.” While some challenged his actions as human rights violations, many agreed with and supported his “tough on crime” approach. As Romero notes, the media is complicit in legitimizing his viewpoint because, “by interviewing him regularly for his viewpoint on border issues” he is presented to the public as an immigration expert rather than a hateful bully who refers to raids as “crime suppression sweeps.”²¹

Because of such state-sanctioned behavior, the hysteria has reached new heights and fueled vigilantism. Some groups that claim to protect the border really promote fear by suggesting Spanish is going to become the dominant language and that immigrants (code for racial “others”) are going to dilute or eradicate the U.S. “national culture and way of life.” Some groups like the Minutemen Civil Defense Corps don militaristic costumes. Other groups, such as Mothers Against Illegal Aliens pose their activism as needed to defend the family. Their performances juxtapose immigrant mothers, who with their children are often described in animalistic or subhuman terms (breeding like rabbits, incapable of instilling morals and values, alien babies), to Non-Latina white mothers who are supposedly under siege.²²

The vigilantes, the law, and a sector of civil society that is angry at the existence of migrants in their midst, create dehumanizing, anti-immigrant narratives to hijack the migrants’ own voices and real stories of hard work, citizenship, and belonging as the next two essays show.

B. Rene Galindo’s “Embodying the Gap Between National Inclusion and Exclusion: The ‘Testimonios’ of Three Undocumented Students at a 2007 Congressional Hearing”

Rene Galindo’s work, *Embodying the Gap between National Inclusion and Exclusion: The “Testimonios” of Three Undocumented Students at a*

²⁰ Romero, *supra* note 12.

²¹ *Id.*

²² *Id.*

2007 Congressional Hearing,²³ is almost the flip side of the immigration conversation from the one described by Romero. Here, the focus is not the nativist reaction to the foreigner, but the foreigners themselves who come to life through narratives. Specifically, Galindo, taking as a given “[t]he negative consequences of current immigration policy,” centers his analysis on the dilemma that undocumented students confront. He juxtaposes the *Plyler v. Doe*²⁴ decision to the reality of students being denied in-state tuition in all but eleven states, thus negating the effect of *Plyler* for higher education and criminalizing students rather than educating them so that they can become productive members of society.²⁵

Galindo provides some impressive statistics on the undocumented in the United States, particularly the undocumented youth, which totals about 1.5 million with 65,000 graduating high school every year. Twenty-two percent of all Latina/o youth are unauthorized; of the unauthorized high school graduates forty-nine percent attend or have attended college and they and their supporters have formed student advocacy groups to promote their interests. These groups have given undocumented students voices and identities, providing a means to “overc[o]me the social stigma and silencing of undocumented status.”²⁶

Some undocumented students “came out” as undocumented in order to support the DREAM Act, a federal law that “would provide affordable access to higher education and a pathway to citizenship.” Indeed, self-identifying as undocumented is a valiant political act that not only “interrupts the ‘regime of enforced invisibility’ . . . [but also] challenges their metaphoric and political confinement to the ‘shadows of society’ where undocumented immigrants are expected to live anonymous and depersonalized lives as laborers without names, faces, or voices.” The three students on whom Galindo focuses all had personal experience with the criminalization of status. One was awaiting deportation and had received deportation orders, another had lost a political asylum claim, and the third received a change of status. They all used their personal narratives to create an understanding of the harmful effects of the current state of the law, to critique the concept of illegality of persons, and to place a human face on the undocumented. Their *testimonios* (testimonies) served to “reconfigure[] an oppressive world from the point of view of the subaltern.”²⁷

These *testimonios* brought life to a community of invisible persons who share a story because of the criminalization of their status. Their goal was to help others—others not only in the sense of their undocumented status, but

²³ Rene Galindo, *Embodying the Gap Between National Inclusion and Exclusion: The Testimonios of Three Undocumented Students at a 2007 Congressional Hearing*, 14 HARV. LATINO L. REV. (forthcoming 2011).

²⁴ *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that public schools cannot deny a seat to children based on their immigration status).

²⁵ See Galindo, *supra* note 23.

²⁶ *Id.*

²⁷ *Id.*

others who are also racialized—confirming that we are far from living in a post-racial society. These students were not born on U.S. soil, but the United States is the only country they know—the country with which they identify. They are on the receiving end of the hate-based organizations about which Romero wrote which seek to dehumanize the foreign “other.” These *testimonios* serve to reclaim humanity and dignity.

C. Charles Venator Santiago's "*Deporting Dominicans: Some Preliminary Findings*"

Charles Venator Santiago's essay, *Deporting Dominicans: Some Preliminary Findings*,²⁸ confirms the complexity of the immigration story. This essay focuses on the deportation of Dominicans from the United States and underscores the fact that the simple act of being without papers constitutes the criminality that anti-immigrant groups utilize to create fear of the racialized “other.” The article provides a valuable tool through its analysis of data to create a profile of—and in so doing expose realities about—the socio-legal condition of Dominican deportees.²⁹ The profile also puts a human face on the deportees, much like the *testimonios* do with respect to migrants.³⁰ Yet, the focus on individual experiences and *testimonios* cannot be allowed to obscure the structural, racialized dimensions of the deportation process.

The essay first historicizes the Dominican experience of migration to the United States. Data shows that “most Dominicans have been removed [from the United States] for non-criminal activities, although in 1991 the United States began to deport more Dominicans for criminal offenses rather than non-criminal offenses.”³¹ Of course, this coincides with the time when draconian immigration legislation criminalized status, as both the Romero and Galindo essays already noted.³² Significantly, although Dominican officials do not deny the difference between criminality based on status and criminality for committing other types of criminal offenses, “the official policy of the Dominican Republic is to treat all removals . . . as criminal deportees without recognizing legal distinctions between the process by which they were removed or the offenses that led to their removals from the United States.” They are treated as criminals even if they simply committed a status offense or if the offense is not a crime recognized in the Dominican Republic.³³

Demographically, most deportees are male with family in the United States, which may have an impact on the family's economic well-being.

²⁸ Charles Venator Santiago, *Deporting Dominicans: Some Preliminary Findings*, 14 HARV. LATINO L. REV. (forthcoming 2011).

²⁹ See *id.*

³⁰ See Galindo, *supra* note 23.

³¹ Santiago, *supra* note 28.

³² See Romero, *supra* note 12; Galindo, *supra* note 23.

³³ Venator Santiago, *supra* note 28.

Also demographically, Dominicans are racial "others." For example, Venator Santiago has found that "U.S. officials tend to classify Dominicans within a spectrum of the color category of medium and are less likely to describe the deportee as either [B]lack or [W]hite." Interestingly, the same deportees are (re-)classified by Dominican officials as "*Trigueño* (light black) or *Indio* (indigenous/light brown)."³⁴ These racialized images comport with the anti-immigrant, popular narrative presented in Romero's essay of the brown criminalized individual.³⁵

What is exceptional, that this essay unveils, is the local consequences of the U.S. anti-immigrant moves. After the enactment of the 1996 immigration laws, as Venator Santiago elucidates, in response to U.S. requests, the Dominican government developed a system of tracking the deportees in the Dominican Republic. The result is that "[a]ll Dominicans removed from the United States are transported, repatriated, and registered as criminal deportees upon arrival to the Dominican Republic." Upon arrival, their names and pictures are published in the local paper. Although the claim is that such publication advises friends and relatives of arrivals, the deportees maintain that it is this stigmatization that interferes with their ability to re-enter Dominican society. All are placed on parole for between six months and a year during which time they (1) must contact the Department of Deportees on a monthly basis and (2) are technically unable to work as they cannot obtain an identity card until the Department provides a letter of good conduct.³⁶

The travesty here is that the U.S. criminalization of status and racialization of migration now has dire consequences that travel back with the individual to his/her state of nationality. This leads to local stigmatization and dehumanization that is tantamount to the exportation and globalization of the anti-immigrant U.S. popular narrative.

III. THE REALITY

It is beyond peradventure that some progress has been made. Interracial heterosexual marriage is legal,³⁷ more persons of color attend college (although at a much lower rate than their not-of-color counterparts), a few persons of color are heads of businesses, and persons of color are represented throughout the employment spectrum. However, there are many disturbing statistics that argue against a post-racial state: prison populations,³⁸

³⁴ *Id.*

³⁵ See Romero, *supra* note 12.

³⁶ See Venator Santiago, *supra* note 28.

³⁷ However, marriage between persons of the same sex remains illegal around the world except in a few states; in the United States only a few states allow it. See Leslie Joan Harris et al., *State Recognition of Same-Sex Unions: Marriage, Civil Unions, Domestic Partnerships, and Reciprocal Beneficiaries*, in FAMILY LAW 200-05 (4th ed. 2010); Leslie Joan Harris et al., *Note: International Legal Recognition of Same-Sex Couples*, in FAMILY LAW 200-05 (4th ed. 2010). This, of course, affects sexual minorities who are also racial or ethnic minorities.

³⁸ The United States imprisons a greater proportion of its Black citizens than did South Africa during the Apartheid. Paul Street, *FDL Book Salon Welcomes, Michelle Alexander, The*

income and wealth gaps,³⁹ unemployment,⁴⁰ education,⁴¹ health insurance,⁴² and delivery of medical services⁴³ all remain spheres in which racial disparities are all too real.

As the articles in this cluster plainly evidence, hot button issues in this country are played out in terms of race. In this time of post 9/11 angst,⁴⁴ the immigration debate, limned with security and terrorism concerns, targets Latinas/os and is wholly racialized. Even the election of President Obama, utilized by so many to mark a post-racial state, was racialized in a way not openly discussed.⁴⁵ The remarkable narrative about and in opposition to President Obama ironically tie the essays in this cluster together. The nativist movement is reflected in the anti-immigrant sentiments that all three articles address; and it is this movement that accuses the President of not

New Jim Crow: Mass Incarceration in the Age of Color Blindness, FIREDOGLAKE (May 30, 2010), <http://firedoglake.com/2010/05/30/fdl-book-salon-welcomes-michelle-alexander-the-new-jim-crow-mass-incarceration-in-the-age-of-color-blindness/>. Although Blacks comprise only twelve percent of the total population, they account for forty-four percent of all prisoners. Andrea Seabrook, *Black Men's Jail Time Hits Entire Communities*, NAT'L PUB. RADIO (Aug. 23, 2010), <http://www.npr.org/templates/story/story.php?storyId=129379700>.

³⁹ American Indians experience the highest poverty rate at 27.7%, Blacks follow with a rate of 25.9%, and Latinas/os are close with a rate of 25.4%. In contrast, Non-Latina/o Whites and Asians experience a rate of 12.5%. Angelo Falcón, *Latino Economic Distress: Recent Statistics*, BLOG DE RILATINO.COM (Mar. 29, 2011, 4:29 PM), <http://blog.rimix.com/rilatino/entrada/9437-2010-latino-economic-indicators%E2%80%8F.html>. It is significant that Latina/o rates vary for the different subgroups as follows: Mexicans – 27.9%; mainland Puertoorriqueñas/os – 22.6%; Central and South Americans – 21.3%; and Cubans 17.1%. *Id.* Gaps are also evident in statistics regarding median household income: Whites - \$54,461; Latinas/os - \$38,039; Blacks - \$32,584. *Id.* The wealth gap between White and Black families has quadrupled in the past twenty-five years. Sugrue, *supra* note 9. Wealth is the cash, stocks, and bonds, plus the real estate held by a family minus their debts. *See id.*

⁴⁰ As of August 2010, while the national unemployment rate continued to hover at around ten percent, the rate of unemployment for Black adults was 16.3% and 12% for Latina/o adults, compared to 8.7% for White adults. *Unemployment Drops to 8.8% in March 2011*, NAT'L CONF. ST. LEGISLATURES (Apr. 1, 2011), <http://www.ncsl.org/?tabid=13307>; Falcón, *supra* note 39.

⁴¹ While two-thirds of White middle class children go on to achieve higher average incomes than their parents did, such is the reality for only one-third of middle income Black children. Julia Isaacs, *Income Gap Between Blacks, Whites Expands*, NAT'L PUB. RADIO (Nov. 13, 2007), <http://www.npr.org/templates/story/story.php?storyId=16293332>.

⁴² Currently, one in three Latinas/os and one in five Blacks are uninsured, compared to just one in ten White Americans. Marc H. Morial, *The State of Black America 2010: Responding to the Jobs Crisis*, NAT'L URB. LEAGUE (Mar. 24, 2010), <http://www.nul.org/content/tbe-12-state-black-america-2010-responding-jobs-crisis>.

⁴³ A joint research effort by Johns Hopkins University and the University of Maryland found that the quality of medical services received was better for whites than racial minorities. *See Kelly Brewington, Cost of Racial Disparities in Health Care Put at \$229 Billion Between 2003, 2006*, BALT. SUN, Sept. 18, 2009, available at <http://www.commondreams.org/headline/2009/09/18-1>.

⁴⁴ *See generally* Hernández-Truyol, *supra* note 17.

⁴⁵ Ninety-five percent of all Black voters nation-wide voted for Obama, while only around half of all White people did. Walter Rodgers, *A Year into Obama's Presidency, Is America Post-Racial?*, CHRISTIAN SCI. MONITOR (Jan. 5, 2010), <http://www.csmonitor.com/Commentary/Walter-Rodgers/2010/0105/A-year-into-Obama-s-presidency-is-America-postracial>.

being born on U.S. soil and thus ineligible to be this country's leader.⁴⁶ With the climate effected by the virulent anti-immigrant sentiments, this trope suggests that nativist opponents intentionally attempt to create fear among U.S. citizens about the security of our nation due to the racialized "other."

A post-racial country is not one in which the most recognizable members of the opposition blame all the nations problems—notably immigration, terrorism, and criminality—on racial "others." Claiming to be post-racial in such a situation is dangerous, in that it negates many of the advances in race relations that have been made by hiding from persistent race-related problems.⁴⁷ Today, we are not post-racial. In fact, we are far from being a post-racial society as the term currently is being deployed and as the essays establish. Sadly, we are at least as far away in other related categories. The Romero essay establishes this with respect to sex, as it describes the hate-talk surrounding immigrant mothers. Similarly, the Galindo essay shows that ethnicity and foreignness are ill received. Finally, the Venator Santiago essay shows how far we have to work to deal fairly along the color line. It goes without saying that beyond race, sex/gender, ethnicity, and color, there exist fault lines around sexuality, class, and ability, to name a few. Given these realities of a post-nothing world, the following conclusion is intended to provide a ray of hope.

IV. CONCLUSION

The articles, along with the information about society during President Obama's candidacy for, election to, and service in the office of President of the United States demonstrates that we are far from truly being a post-racial society. In this regard, the International Human Rights system can be of assistance in establishing goals that allow the flourishing of nation, identity, and outsiders without losing difference, but without being detrimented by difference either. All international human rights documents prohibit discrimination and protect equality along many more characteristics than the U.S. Constitution. Thus, using a human rights framework expands the categories of protection. For example, the documents protect on the grounds of language and social origin,⁴⁸ reaching areas not protected in this country and that would serve the populations about which Romero, Galindo, and Venator Santiago write. In addition, the interpretation of the meaning of sex in the

⁴⁶ See Deepak Chopra, *Birthers and the Politics of the Shameless*, S.F. CHRON., May 2, 2011, available at http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2011/05/02/deepak_chopra_birthers_politics.DTL.

⁴⁷ See David Dante Troutt, *What Do You Mean 'Post-Racial'?*, POLITICO (July 25, 2010), <http://www.politico.com/news/stories/0710/40101.html>.

⁴⁸ See, e.g., International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], available at <http://www2.ohchr.org/english/law/ccpr.htm>; International Covenant on Economic, Social and Cultural Rights art. 2(2), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR], available at <http://www2.ohchr.org/english/law/cescr.htm>.

international documents includes sexual orientation,⁴⁹ thus raising protections that are far from reality in the United States. Although all the essays are silent on the issue of sexuality, it cannot be doubted that some migrants are sexual minorities who then are as invisible in their communities as they are in the essays—outsiders at the margins of their outsider communities.

International decisions are also very significant and useful in the quest for equality, as they insist on protecting both *de jure* and *de facto* equality.⁵⁰ Addressing the concerns for multidimensionality, the international human rights system starts out by recognizing that rights are inalienable, indivisible, and interrelated.⁵¹ So, the so-called three generations of rights—civil and political; social, economic, and cultural; and solidarity or group rights⁵²—are recognized as all being necessary to attain human well-being. It cannot escape us that the international system recognizes such a thing as social, economic, and cultural rights—rights completely lacking protection in the U.S. constitutional system, rights that often explain the reason for the migrations explored in this cluster. Beyond that, it recognizes that these must work together with the civil and political rights of individuals in order for those individuals to be able to truly thrive. As this author often explains it,⁵³ this paradigm understands that the right to vote will mean little to a parent who has hungry children, children for whom s/he cannot provide shelter, education, or clothing. To be sure, this is not a wholesale embrace of the Human Rights system as it exists today. The system is flawed and shares some of the structural inequities that the U.S. and other systems reveal;⁵⁴ but, a reformed human rights ideal, stripped of the structural foundational inequities, is very useful in providing a paradigm that can promote equality.

The United States can only aspire to become a post-something/anything society by engaging the issues and discussing the best solutions to them as a multidimensional society. Each person has a race, though one is privileged as normative. Similarly, each person has a sex, though one is privileged as normative; a gender, though conformity is privileged as normative; a sexual-

⁴⁹ See, e.g., U.N. Hum. Rts. Comm., *Toonen v. Australia*, ¶ 8.7, Apr. 4, 1994, U.N. Doc. CCPR/C/50/D/488/1992 (“in [the Committee’s] view, the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.”).

⁵⁰ See, e.g., *Minority Schools in Albania*, Advisory Opinion, 935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6).

⁵¹ See ICCPR, *supra* note 48, at Preamble; ICESCR, *supra* note 48, at Preamble.

⁵² Berta Esperanza Hernández-Truyol, *Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution in Women and International Human Rights Law* VOLUME 1 3, 25-29 (Kelly D. Askin & Doreen M. Koenig eds. 1999).

⁵³ See, e.g., *id.*; Berta Esperanza Hernández-Truyol & Stephen J. Powell, *JUST TRADE: A NEW COVENANT LINKING TRADE AND HUMAN RIGHTS* (2009); Berta Esperanza Hernández-Truyol & Christy Gleason, *Introduction*, in *MORAL IMPERIALISM: A CRITICAL ANTHOLOGY* (Berta Esperanza Hernández-Truyol ed. 2002); Berta Esperanza Hernández-Truyol, *Human Rights, Globalization and Culture: Centering Personhood in International Narrative*, in *MORAL IMPERIALISM: A CRITICAL ANTHOLOGY* (Berta Esperanza Hernández-Truyol ed. 2002).

⁵⁴ See generally Berta Esperanza Hernández-Truyol, *Building Bridges IV: Of Cultures, Colors, and Clashes—Capturing the International in Delgado’s Chronicles*, 4 HARV. LATINO L. REV. 115 (2000).

ity, though one is privileged as normative, and so on. Circumstances in life sometimes will require that one of our multidimensional identity axes be centered in order to address a particular problem of the times—strategic essentialisms might realistically be necessary. There is hard work ahead for all of us; but the particularly hard work is for those with privilege—of whatever kind—to recognize it, engage it, and eschew it so that each person can pursue the quest for equality, for maximizing his/her human capabilities,⁵⁵ and to create a better world for all.

⁵⁵ See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 293 (1999) (juxtaposing the concepts of human capital and human capability with the former focusing “on the agency of human beings in augmenting production possibilities” and the latter being concerned with “the ability—the substantive freedom—of people to lead the lives they have reason to value and to enhance the real choices they have”).

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